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Dept. of Strange Bedfellows: C.I.A. and A.C.L.U.

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Special to The New York Times

WASHINGTON, Jan. 15 — By strenuously and publicly disagreeing about almost every conceivable subject for the last four years, the Reagan Administration and the American Civil Liberties Union have provided the capital with a long-running political drama.

Edwin Meese 3d, the Presidential counselor whom Mr. Reagan has nominated to be Attorney General, set the tone in 1981 when he said the A.C.L.U. was part of a "criminal lobby" because it supported civil liberties protections that made the job of prosecutors more difficult. The A.C.L.U., in turn, has sharply criticized a number of Reagan Administration's moves such as its executive orders expanding Government censorship and secrecy.

But to have a voice in shaping a law as it makes its way through Congress, it is occasionally necessary for contending parties to put aside their quarrels. Sometimes they even end up sitting down together and drafting the specific language of the legislation they are publicly fighting about.

Closet Negotiating

This process of closet negotiating often involves other traditional Washington antagonists like labor unions and business organizations or environmentalists and the chemical industry.

The Central Intelligence Agency recently opened a small window on this seldom-documented practice when it released a handful of memorandums touching upon its contacts with the A.C.L.U. in yearlong negotiations over legislation to specifically exclude certain C.I.A. files from the reach of the Freedom of Information Act requests.

On March 14, 1983, for example, Ernest Mayerfeld, the C.I.A.'s deputy general counsel, wrote a memorandum about his meeting with Mark Lynch, an A.C.L.U. lawyer, and Representative Romano L. Mazzoli, Democrat of Kentucky, a member of the House Intelligence Committee who introduced the House version of what the agency referred to as "the F.O.I.A. relief legislation."

"We will have a draft ready for discussion with Mark Lynch early this week," Mr. Mayerfeld wrote.

According to another memorandum dated May 6, 1983, the C.I.A. gave Steven K. Berry, a Republican staff member of the House Intelligence Committee, "a copy of the seven points of understanding reached between Ernie and Mark Lynch and a copy of the bill."

When the legislation finally emerged from Congress, the A.C.L.U. defended it as a law that, by easing the Central Intelligence Agency's search requirements in one area, would mean fewer delays in the handling of other categories of information. The civil liberties union also contended that given the political climate, the legislation was the best that could be obtained.

The documents indicate that the C.I.A. was pleased, too. The Republican members of the House Intelligence Committee could be brought around to understanding why the agency had negotiated with the A.C.L.U., one memorandum said, and the resulting legislation would provide "relief to the Agency without creating statutory language that will permit the release of any further intelligence than is the case now."

Paradoxically, the documents about the negotiations leading to changing the information law were obtained in response to a Freedom of Information Law request submitted by James H. Lesar, a Washington lawyer known as a critic of the C.I.A.

Mr. Lesar does not criticize the A.C.L.U.'s decision to negotiate with the C.I.A., although he said he wished the union, in the course of the talks, had consulted more with him and other individuals actively involved in information suits against the agency.

But the lawyer does criticize the outcome of the negotiations. The legislation, signed into law by President Reagan last Oct. 15, exempts the C.I.A. from ever having to search its operational files in response to a request for data under the Freedom of Information Law. The A.C.L.U. argued that exemptions already in the law meant that such information was not being released anyway and that the legislation exempting the agency from searching for this category of information would allow it to do better on other kinds of requests.

Among other things, Mr. Lesar said the contested legislation should have imposed a time limit on the exemption given the C.I.A. "At some point, 10 or 15 years after an event, historians ought to be able to get at operational files," he said.

Mr. Lynch said the A.C.L.U. had made no "deal" with the C.I.A. on the legislation. He pointed to his testimony to the House Intelligence Committee last February that the A.C.L.U. would oppose the versions of the legislation then pending before both the House and the Senate.

But questions about the appropriateness of the A.C.L.U. negotiations with the C.I.A. and doubts about the legislation have prompted criticism from the union's two California chapters. As a result, the board of governors of the national A.C.L.U. is scheduled to consider a report on the dispute at its meeting in New York later this month.

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